IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LONSHYA BRADLEY, Plaintiff,	:	
v.	:	CIVIL ACTION
MAURICE O'DONOGHUE, et al., Defendants.	:	NO. 03-5071

MEMORANDUM & ORDER

YOHN, J. March ____, 2005

This lawsuit arises out of a collision between a pedestrian and an automobile along Route 13 in Bristol, Pennsylvania. A car driven by defendant Maurice O'Donoghue struck plaintiff Lonshya Bradley after another driver, an employee of defendant Columbia Lighting-LCA, allegedly waived to her to cross the highway. The accident left Bradley in a coma and her guardian ad litem, Donna Rosas, brought separate counts of negligence on behalf of Bradley against O'Donoghue and Columbia Lighting.[1] Presently before the court are O'Donoghue and Columbia Lighting's motions for summary judgment and Bradley's cross motion for summary judgment. For the following reasons, I will deny all of the motions.

I. FACTUAL BACKGROUND

On the day of the accident, April 26, 2000, around 10:00 pm, plaintiff Lonshya Bradley, age sixteen, and three friends, Maggie Sharpe, Sweetie Sharpe, and Agnes Sungbeh, age fifteen,

[1]The complaint also names Burger King Corporation, the owner of a nearby restaurant, as a defendant. (Pl.'s Compl. at ¶ 27.)

fifteen, and seventeen, stopped at a Burger King restaurant on the corner of Route 13 and Beaver Dam Road, in Bristol Township, Bucks County, Pennsylvania. (Dep. of Agnes Sungbeh ("Sungbeh Dep.") at 49–50; Police Report at 5.) After leaving the restaurant, the girls proceeded toward the intersection of Route 13 and Beaver Dam Road. (Sungbeh Dep. at 49–50.) Route 13 is a four-lane highway with a cement median that divides the two east-bound lanes from the two west-bound lanes. (Police Report at 4.) The posted speed limit is forty miles per hour and there is no crosswalk for pedestrians crossing Route 13. (*Id*. at 4; Dep. of Lance Robson ("Robson Dep.") at 120; Ex. A to O'Donoghue's Reply to Columbia Lighting's Answer to O'Donoghue's Mot. Summ. J.) When the girls' reached the intersection, motorists on Beaver Dam Road had a green light, and motorists on Route 13 had a red light. (Sungbeh Dep. at 75–77.) The girls ran across the eastbound lanes onto the median strip. *(Id*. at 75.) By the time they reached the median, the light had turned red for Beaver Dam Road traffic and green for traffic on Route 13. (*Id*. at 85; O'Donoghue Dep. at 34.; Patterson Dep. at 34.)

At this point, Brian Patterson, who was operating a tractor (with no trailer) for defendant Columbia Lighting, was waiting in the westbound passing lane to turn left into the Burger King driveway. (Police Report at 4.) Patterson made a hand motion to the girls and they crossed in front of his truck. (Dep. of Sweetie Sharpe ("S. Sharpe Dep.") at 86); Dep. of Brian Patterson ("Patterson Dep.") at 52.) After crossing the passing lane, Bradley continued into the westbound traveling lane, where she was struck by O'Donoghue's vehicle, which was traveling west in that lane.[2] (Dep. of Maggie Sharpe ("M. Sharpe Dep.") at 113–14.) O'Donoghue had a green light at

[2]The parties dispute whether Bradley walked or ran into the traveling lane. (*See* Patterson Dep. at 45; M. Sharpe Dep. at 92; S. Sharpe at 86; Sungbeh at 108.)

the time. (Dep. of Maurice O'Donoghue ("O'Donoghue Dep.") at 34.) Because Patterson's truck obscured their view, neither O'Donoghue nor the girls saw each other before the collision. (Pl.'s Answer to O'Donoghue's Mot. Summ J. at ¶ 10.)

The accident left Bradley completely incapacitated and she is incapable of any communication. On September 9, 2003, Bradley, filed this diversity suit against O'Donoghue, Columbia Lighting, and Burger King Corporation.[3] The complaint alleges that (1) O'Donoghue exceeded the speed limit and failed to keep a proper lookout, (2) that Patterson, acting on behalf of Columbia Lighting, negligently signaled to Bradley that it was safe to cross the intersection, and (3) that Burger King negligently failed to provide a crosswalk or warning signs to protect pedestrians such as Bradley. (Pl.'s Compl. at ¶ 17, 20, 27.)

Maggie Sharpe, Sweetie Sharpe, Agnes Sungbeh, Patterson and O'Donoghue all testified in separate depositions. The witnesses disagree about the nature of Patterson's hand motion. All three girls testified that Patterson waved to signal that it was safe to cross the lane where Bradley was hit. (M. Sharpe Dep. at 80; S. Sharpe Dep. at 77; Sungbeh Dep. at 85.) Patterson admitted waving to the girls, but testified that he waved to stop them from entering the traveling lane. (Patterson Dep. at 52.)

The witnesses also dispute how fast O'Donoghue was traveling at the time of the accident. O'Donoghue testified that he was driving thirty to forty miles per hour, thereby obeying the speed limit. (O'Donoghue Dep. at 86.) Sungbeh and Maggie Sharpe testified that O' Donoghue was exceeding the speed limit when he hit Bradley. (M. Sharpe Dep. at 115;

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[3]Bradley filed a similar case against the same defendants in 2002. That case was dismissed for lack of subject matter jurisdiction. *See Bradley & Ross v. O'Donoghue, et al.*, No. 02-2338 (E.D. Pa. filed April 22, 2002).

Sungbeh Dep. at 140.)[4] None of the girls had any experience driving automobiles at the time of the accident. (M. Sharpe Dep. at 115; S. Sharpe Dep. at 91.) However, when asked how she could estimate O'Donoghue's speed, Maggie Sharpe explained that when riding in her mother's car, she habitually studied the speedometer and the speed of the vehicle. (M. Sharpe Dep. at 115, 149–53.) Patterson did not testify about the speed of O'Donoghue's vehicle. (Patterson Dep. at 55.)

Lastly, when O'Donoghue was asked whether he looked behind Patterson's truck for pedestrians, he testified that he did not because he had a green light, but added that at the time of the accident he "was concentrating on where [he] was going." (O'Donoghue Dep. at 151–52.)

II. STANDARD OF REVIEW

A court may only grant a motion for summary judgement, "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. Pro. 56(c). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." *Ideal Dairy Farms, Inc. v. John Labatt, Ltd.*, 90 F.3d 737, 743 (3d Cir. 1996) (citation omitted).

When a court evaluates a motion for summary judgment, "[t]he evidence of the non-movant is to be believed." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). In

[4]Sungbeh testified that O'Donoghue was driving sixty to sixty-five miles per hour and Maggie Sharpe claimed that he was driving sixty to eighty miles per hour. (Sungbeh Dep. at 140; M. Sharpe Dep. at 115.)

addition, "[a]ll justifiable inferences are to be drawn in [the non-movant's] favor." *Id.* "Summary judgment may not be granted . . . if there is a disagreement over what inferences can be reasonably drawn from the facts even if the facts are undisputed." *Ideal Dairy*, 90 F.3d at 744 (citation omitted). However, "an inference based upon a speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment." *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 382 n.12 (3d Cir. 1990). The non-movant must show more than "[t]he mere existence of a scintilla of evidence" for elements on which he bears the burden of production. *Anderson*, 477 U.S. at 252. Thus, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Inuds. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citations omitted).

III. DISCUSSION

A. O'Donoghue's Motion

O'Donoghue argues that the three girls are incompetent to testify about the speed of his car because they did not have a sufficient opportunity to observe the vehicle and because they do not have the requisite experience with automobiles. He contends that without this testimony there is no evidence that O'Donoghue was negligent.[5]

Under Federal Rule of Evidence 601, in civil actions where state law supplies the rule of

[5]Under Pennsylvania law, negligence requires proof of the following four elements: (1) "the defendant owed a duty of care to the plaintiff,: (2) "the defendant breached that duty," (3) "the breach resulted in injury to the plaintiff," and (4) "the plaintiff suffered an actual loss or damage." *Martin v. Evans*, 711 A.2d 458, 461 (Pa. 1998) (citation omitted).

the decision, "the competency of . . . witness[es] shall be determined in accordance with State law." Here, because jurisdiction is based on diversity, Pennsylvania law supplies the rule of the decision and I must look to Pennsylvania law to determine whether the girls are competent to testify about O'Donoghue's speed. *See Erie R.R. v. Tompkins*, 304 U.S. 64 (1938).

Under Pennsylvania law, a nonexpert witness may express an opinion about the speed of an automobile. *Dugan v. Arthurs*, 79 A. 626, 628 (Pa. 1911). Whether the witness is qualified to provide an estimate of a vehicle's speed is a matter for the trial judge, *Cooper v. Metro. Life Ins. Co.*, 186 A. 125, 128 (Pa. 1936), but the value and weight given such testimony is for the jury to decide. *Kotlikoff v. Master*, 27 A.2d 35, 38 (Pa. 1945). Lay witness estimations of speed are admissible if the witness (1) "observ[ed] the vehicular movement in question"[6] and (2) has "a recognition of impressions of like vehicles at relative speeds." *Shaffer v. Torrens*, 58 A.2d 439, 442 (Pa. 1948).

O'Donoghue contends that the girls did not have a sufficient opportunity to observe his speed. Ordinarily, "evidence of the distance over which the observed vehicle moved during the period of observation will go to the weight of the witness's estimation." *Radogna v. Hester*, 388 A.2d 1087, 1089 (Pa. Super. Ct. 1978) However, "if the distance is exceedingly small, the court may refuse to allow a witness to offer an estimate of speed because it is apparent that the witness had only a 'fleeting' glimpse of the moving vehicle." *Id.*

In *Shaffer*, the court affirmed the trial court's admission of a witness's estimation of

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[6]This requirement is similar to Federal Rule of Evidence 701, which governs lay witness testimony in general. Under Rule 701, lay witness testimony is admissible if it is "(a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge . . . ."

speed where the witness observed the vehicle over a span of ten feet before it collided with the plaintiff and sixty-five to seventy feet after the accident. 58 A.2d at 441–42. The court concluded that the witness's impression of the car's speed immediately *after* it struck the plaintiff was admissible. *See id.* at 442 ("Undoubtedly, the velocity with which the car was moving both before and immediately after it struck the plaintiff had its effect in impressing [the witness] with its speed . . . . [and] [w]e can see no harm in that."). Additionally, Pennsylvania courts have admitted witness estimations of speed where the witness observed the vehicle in question for a very short period. In *Commonwealth v. Reynolds*, 389 A.2d 1113, 1119 (Pa. Super. Ct. 1978), the court concluded that a witness had a sufficient opportunity to assess the speed of a vehicle when he saw the car for two seconds before an accident, and in *Sapsara v. Peoples Cab Co.*, 2 Pa. D. & C. 22, 24 (1954), the court found that a witness was competent to testify where he observed the vehicle over a span of ten to fifteen feet. *But see Guzman v. Bloom*, 198 A.2d 499, 502 (Pa. 1964) (concluding that a witness "could hardly form an opinion as to speed based on observation" where "he did not see the . . . car until it was five or six feet from him, almost at the split second of impact.")

Here, none of the girls saw O'Donoghue's car before the collision. (Pl.'s Answer to O'Donoghue's Mot. Summ J. at ¶ 10.) However, Maggie Sharpe stated that she saw O'Donoghue's headlights before the accident, and Maggie and Sungbeh testified that they saw the car strike Bradley. (M. Sharpe Dep. at 114–15; Sungbeh Dep. at 139). Additionally, Sungbeh observed O'Donoghue's car after the collision, although it is unclear how long she

watched it.[7] (Sungbeh Dep. at 143.)

The deposition testimony is too imprecise and contradictory to conclude at this stage of the proceedings that the witnesses had an insufficient opportunity to observe O'Donoghue's car. While there is no clear evidence that any of the witnesses watched the car travel a specific distance, a rational jury could conclude that the girls are competent to estimate O'Donoghue's speed. For instance, Maggie could have estimated O'Donoghue's speed by watching his headlights, and, under *Shaffer*, Sungbeh could estimate O'Donoghue's speed based on her observations after the collision. *See* 58 A.2d 442.

O'Donoghue also argues that the girls cannot reliably estimate vehicular speed because at the time of the accident none of them had driver's licenses or had ever operated a motor vehicle. In *Connolly v. Bell Telephone Co.* 83 P. D. & C., 342, 344–45 (1952), the Common Pleas Court of Allegheny County permitted an eleven-year-old child to testify about a vehicle's speed because he "rode in automobiles frequently, . . . his father owned an automobile, . . . he rode frequently with his father, . . . he watched the speedometer, [and] . . . he watched moving vehicles on the street . . . ." In *Kaufman v. Carlisle Cement Prod. Co.*, 323 A.2d 750, 753 (Pa. Super Ct. 1974), the Pennsylvania Superior Court cited *Connolly* with approval and reversed the trial court's determination that a nine-year-old girl was incompetent to testify as to speed. The court reasoned that the witness must be given an opportunity to explain her qualifications before her testimony could be excluded. *Id*.

Here, Maggie Sharpe testified that she could estimate O'Donoghue's speed because she

[7]Agnes testified that after the accident she watched O'Donoghue's car for "like half a second or something." (Sungbeh Dep. at 143.)

habitually watched the speedometer in her mother's car and other moving vehicles.[8] (M. Sharpe Dep. at 115, 149–53.) Hence, like the witness in *Connolly*, Maggie has experience in judging the speed of moving vehicles. Also, Maggie, who was fifiteen in April 2000, was much older than the children in *Kaufman* and *Connolly* when she witnessed the accident. Moreover, there is insufficient evidence to conclude that Sungbeh is incompetent to testify about O'Donoghue's speed because she was not given an opportunity to explain her qualifications to estimate vehicular speed. For these reasons, I will not exclude Maggie Sharpe or Sungbeh's testimony at this time. The issue can be revisited at trial when the answers will likely be more precise and I will have an opportunity to assess the live testimony of these witnesses rather than rely just on the deposition transcripts. Because I will not exclude all of this testimony, there is sufficient evidence for a rational trier of fact to find that O'Donoghue was negligent. *See Matsushita*, 475 U.S. at 587.

Additionally, even if I excluded all of the girls' testimony about O'Donoghue's speed, summary judgment is inappropriate because Bradley has come forward with evidence that O'Donoghue was inattentive when he drove through the intersection. In his deposition, O'Donoghue testified that he did not look for pedestrians behind Patterson's truck when he entered the intersection of Beaver Dam Road and Route 13. (O'Donoghue Dep. 151.) In Pennsylvania, even if a motorist has a green light, he must look for traffic as he proceeds through an intersection. *See Moore v. Smith*, 343 F.2d 206, 209 (3d Cir. 1965) (applying Pennsylvania law). Thus, this evidence also suggests that O'Donoghue was negligent and thereby creates a

[8]Sungbeh was not given the opportunity to explain her qualifications to estimate vehicular speed.

genuine issue for trial.

B. Columbia Lighting's Motion for Summary Judgment

Columbia Lighting contends that the court should dismiss the case because Bradley's own negligence was the primary cause of her injuries, and thus she cannot recover under Pennsylvania's Comparative Negligence Act. 42 Pa. Cons. Stat. § 7102. Under the Act, a plaintiff who was contributorily negligent may recover so long as her negligence "was not greater than the causal negligence of the defendant or defendants against whom recovery is sought . . . ." *Id*.

Before I may apportion fault, I must evaluate whether Bradley was negligent as a matter of law. Columbia Lighting asserts that Bradley was contributorily negligent per se because she violated Pa. Cons. Stat. § 3112(a)(3)(iii), which provides that "pedestrians facing a steady red signal alone shall not enter the roadway." Negligence per se is "conduct, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances . . . because it is in violation of a statute or valid municipal ordinance . . . ." *White v. Southeastern Pa. Transp. Auth.*, 518 A.2d 810, 815–16 (Pa. Super. Ct. 1986) (quoting *Black's Law Dictionary* 933 (5th ed. 1979)). In Pennsylvania, negligence per se requires proof of the following four elements:

> (1) The purpose of the statute must be, at least in part, to protect the interest of a group of individuals, as opposed to the public generally;
> (2) The statute of regulation must clearly apply to the conduct of the defendant;
> (3) The defendant must violate the statute or regulation;
> (4) The violation of the statute or regulation must be the proximate cause of the plaintiff's injuries.

Wagner v. Anzon, Inc., 684 A.2d 570, 574 (Pa. Super. Ct. 1996)

Under these elements, Bradley is contributorily negligent per se under § 3122(a)(3)(iii).[9] The purpose of this provision is clearly to protect pedestrians, such as Bradley, from moving traffic. *See Wagner*, 684 A.2d at 575 n.4 ("A statute governing traffic has as its primary purpose the safety of those who use the roadways . . . .") Moreover, Bradley undoubtedly violated the statute because the evidence establishes that the light was red for traffic on Beaver Dam Road when Bradley crossed the westbound lanes of Route 13. (O'Donoghue Dep. at 34; Patterson Dep. at 34; Sungbeh Dep. at 85.) Finally, Bradley's violation of the statute was a proximate cause of her injuries. To determine whether an actor's conduct was the proximate cause of the plaintiff's injuries, Pennsylvania courts apply the "substantial factor" test. *See Ford v. Jeffries*, 379 A.2d 111, 114 (Pa. 1977). A cause may be substantial "so long as it is significant or recognizable; it need not be quantified as considerable or large." *Jeter v. Owens-Corning Fiberglas Corp*., 716 A.2d 633, 636 (Pa. Super. 1998). An actor's conduct is not a substantial factor "'if the harm would have been sustained even if the actor had not been negligent.'" *Id*. at 637 (quoting Restatement (Second) of Torts, § 431 (1965)). Bradley's failure to heed traffic signals was undoubtedly a substantial cause of her own injuries. If she had waited for the light to turn green and traffic to stop, she could have avoided her injuries. Thus, Bradley was contributorily negligent as a matter of law.

Even though Bradley was contributorily negligent as a matter of law, Columbia Lighting

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[9]Children accused of contributory negligence are held to a different standard of care than adults. *White*, 518 A.2d at 816. However, minors over the age of fourteen are presumptively capable of negligence and must prove their own incapacity. *Id*. (quoting *Kuhns v. Brugger*, 135 A.2d 395, 401 (Pa. 1957)). Bradley was sixteen at the time of the accident and she does not contend that the court should apply a lesser standard of care. Hence, Bradley is guilty of contributory negligence even though she was a minor at the time.

is not necessarily entitled to summary judgment because ordinarily the jury must decide whether Bradley may recover under Pennsylvania's Comparative Negligence Act. *See White*, 518 A.2d at 818 ("'[It] is still within the exclusive province of the jury to determine whether one shown to have been guilty of negligence per se, was guilty of greater negligence than another shown to have been guilty of some other kind of negligence per se or merely of negligence as a matter of fact and to compare the two and determine which is greater.'") (citation omitted); *see also Peair v. Home Ass'n of Enola Legion No. 751*, 430 A.2d 665, 669 (Pa. Super. Ct. 1981) ("'[S]ummary judgment is a poor device for deciding questions of comparative negligence.'").

Nonetheless, Columbia observes that in rare cases courts may "hold as a matter of law that the plaintiff's negligence was equal to or greater than the defendant's . . . ." *Peair*, 430 A.2d at 669.[10] Columbia Lighting relies on *Hillerman v. Commonwealth Dep't of Transp.*, 595 A.2d 204 (Pa. Commw. Ct. 1991), a case with similar facts to this case. In *Hillerman*, the plaintiff was hit by a car after stepping off a median, walking past a truck, and proceeding into oncoming traffic without looking past the truck. *Id*. Like the case here, the plaintiff's view was obstructed by the truck, and the light was green when she started crossing the street but had turned yellow or red by the time she walked in front of the truck. *Id*. at 204–05. Based on these facts, the court concluded that the plaintiff's own negligence was greater than the defendants as a matter of law. *Id*. at 205–06. Nonetheless, there is an important distinction between this case and *Hillerman* that Columbia Lighting fails to acknowledge. In *Hillerman*, the driver who struck the plaintiff was never identified and was not party to the lawsuit. 595 A.2d at 205. Instead, the plaintiff

[10]In *Peair*, the court concluded that the case in front of it was "not such a rare case" and affirmed the lower court's refusal to grant the defendant's motion for judgment not withstanding the verdict on the issue of comparative negligence. 430 A.2d at 669–70.

attempted to sue the city and the state Department of Transportation for negligent design and maintenance of traffic signals. *Id*. The court concluded that the plaintiff's negligence was "clearly equal to or greater than the defendants in *this case*" without considering the driver's culpability. *Id*. at 206 & n.2 (emphasis added). Here, the driver, O'Donoghue, is a named defendant, and there are additional defendants whose negligence allegedly caused the accident. Hence, I cannot conclude as a matter of law that Bradley, rather than O'Donoghue or Patterson or Burger King (or some combination thereof), was the primary cause of the accident.

Columbia Lighting also contends that it is entitled to summary judgment because Bradley cannot establish that Patterson was negligent. Columbia argues that Patterson owed no duty to Bradley other than his duty to maintain control of his own vehicle. However, in Pennsylvania, a driver may assume a duty of care by gratuitously signaling to another. *See Askew v. Zeller*, 521 A.2d 459, 461–62 (Pa. Super. Ct. 1987); *Erie Ins. Co. v. Williams*, 855 A.2d 59, 62 (Pa. Super Ct. 2004). Columbia Lighting also asserts that Bradley cannot show that Patterson breached his duty. In *Askew*, the court concluded that it is for the "jury to determine the significance reasonably attributable to a motorist's hand signal." 521 A.2d at 462. However, it observed that "where the facts are clear and . . . no inference of negligence may reasonably be drawn, the judge may rule as a matter of law that the signaler is not liable." *Id*. Here, the facts are not clear and summary judgment is inappropriate. Sungbeh, Maggie Sharpe, and Sweetie Sharpe all testified that Patterson waved to signal that it was safe to cross. (M. Sharpe Dep. at 80; S. Sharpe Dep. at 77; Sungbeh Dep. at 85.) In contrast, Patterson testified that he waved to stop the girls from entering the traveling lane. (Patterson Dep. at 52.) Thus, issues of material fact remain.

Columbia further contends that Bradley cannot establish that Patterson's hand signal was

a substantial cause of Bradley's injuries. In *Askew*, the court decided that the jury need not address whether the motorist's act of signaling was negligent because "[the] act was not in the legally responsible chain of events that caused the accident . . . ." 521 A.2d at 463. The court granted summary judgment on causation because facts were not in dispute and the plaintiff "clearly and unequivocally stated" that "he interpreted [the] signal only to mean [that the signaler] would remain stopped and . . . . never relied on [the] signal as an indication that no other traffic was approaching the intersection." *Id*. Here, I cannot conclude that Patterson's hand signal was not a substantial cause of Bradley's injuries. Unlike *Askew*, Bradley is in a coma and she cannot testify as to the extent of her reliance on Patterson's wave. Because genuine issues of material remain, I will deny Columba Lighting's motion for summary judgment.

C. Bradley's Cross Motion for Summary Judgment

Bradley contends that she is entitled to summary judgment because O'Donoghue failed to look for pedestrians in the intersection. "A driver who has a green light is not held to the same standard of care as the driver at an uncontrolled intersection, but he cannot place blind reliance upon the light or upon the conditions observed prior to his entering the intersection." *Smith v. United News Co.*, 196 A.2d 302, 305 (Pa. 1964). However, such drivers "need not approach an intersection with a green traffic light quite so slowly, nor look so continuously for approaching traffic . . . ." *Id*. at 305–06. Here, Bradley relies on *Moore v. Smith*, 343 F.2d at 209, where the Third Circuit observed that under Pennsylvania law "[i]t is well established that an operator of a motor vehicle who does not look for moving traffic on an intersecting street as he approaches the intersection is guilty of negligence as a matter of law even though he proceeds across the intersecting street with a traffic light in his favor." In *Moore*, the court held that the defendant,

who allegedly collided with the plaintiff after running a red light, was negligent as a matter of law because he testified that "he 'was just watching the light'" and "'didn't look to the left -- or to the right', but went straight ahead." *Id*. at 207.

Bradley's evidence is insufficient to sustain a judgment under *Moore*. The parties agree that O'Donoghue had a green light at the time of the accident. O'Donoghue testified that when he entered the intersection, he never looked behind Patterson's truck to determine whether any pedestrians were crossing the street. (O'Donoghue Dep. at 151.) O'Donoghue also testified that when he entered the intersection he "was concentrating on where [he] was going." (*Id*. at 151–52.) A rational jury could find that O'Donoghue was negligent, but a rational jury could also find that O'Donoghue upheld his diminished duty of care. *See Joseph v. Hess Oil*, 867 F.2d 179, 183–84 (3d Cir. 1989) (finding that there was a material issue of fact because a witness made "apparently conflicting statements . . . nearly contemporaneously, in the same deposition"). Thus, genuine issues of material fact remain which are best resolved by a jury and summary judgment against O'Donoghue is inappropriate.

Additionally, even if the evidence indicated that O'Donoghue was negligent as a matter of law, Bradley has failed to prove as a matter of law that O'Donoghue's negligence, rather than Bradley's or Patterson's, was the proximate cause of Bradley's injuries. *See Wright v. Southeastern Pa. Transp. Auth*., 361 A.2d 389, 391 (Pa. Super. Ct. 1976) (observing that *Moore* requires proof that the driver's failure to look for traffic was the "proximate cause of [the] ensuing collision").

IV. CONCLUSION

For the above reasons, I will deny O'Donoghue and Columbia Lighting's motions for summary judgment and Bradley's cross motion for summary judgment. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LONSHYA BRADLEY., Plaintiff,	:	
v.	:	CIVIL ACTION
MAURICE O'DONOGHUE, et al., Defendant.	:	NO. 03-5071

ORDER

AND NOW, this _____ day of March, 2005, upon consideration of defendant Maurice O'Donoghue's motion for summary judgment, defendant Columbia Lighting's motion for summary judgment, plaintiff Lonshya Bradley's cross motion for summary judgment, and the parties' answers and replies thereto, it is hereby ORDERED that:

1. Defendant Maurice O'Donoghue's motion for summary judgment (Doc. No. 82) is DENIED.

2. Defendant Columbia Lighting's motion for summary judgment (Doc. No. 88) is DENIED.

3. Defendant Columbia Lighting's motion for a hearing (Doc. No. 96) is DENIED.

4. Plaintiff Lonshya Bradley's cross motion for summary judgment is DENIED.

5. Trial is scheduled for August 1, 2005 at 10 a.m.

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William H. Yohn. Jr., J.